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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

CLYDE MALLET,

Petitioner,

v.

THE SUPERIOR COURT OF  
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY SHERIFF'S  
DEPARTMENT,

Real Party in Interest.

E047824

(Super.Ct.No. RIF127195)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Petition granted.

Gary Windom, Public Defender, and Ryan E. Hart, Deputy Public Defender, for  
Petitioner.

No appearance for Respondent.

Ferguson, Praet & Sherman and Kelly R.M. Irwin for Real Party in Interest.

In this matter we have reviewed the petition and the opposition thereto which we conclude adequately address the issues raised by the petition. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

A defendant is entitled to discovery of a police officer's confidential personnel records if those files contain information that is potentially relevant to the defense. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 537-538 (*Pitchess*); Evid. Code, §§ 1043-1045.) The discovery procedure has two steps. First, a defendant must file a motion seeking such records, containing affidavits "showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation." (Evid. Code, § 1043, subd. (b)(3).) If good cause is shown, the trial court then reviews the records in camera to determine whether any of them are relevant to the intended defense. (Evid. Code, § 1045, subd. (b).)

The threshold for *Pitchess* discovery is relatively low—that is, the threshold for having the trial court conduct an in camera review. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 83-84.) The general standard of review is "abuse of discretion." (*People v. Memro* (1995) 11 Cal.4th 786, 827.) The defendant must provide a "specific" or "plausible" "factual scenario" demonstrating good cause for the type of record requested. (*California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1017.)

Good cause requires the defendant to establish a logical link between his proposed

defense and the pending charge as well as a showing how the discovery would support such a defense or how it would impeach the officer's version of events. Moreover, the information discoverable under a *Pitchess* motion is limited to "instances of officer misconduct related to the misconduct asserted by the defendant." (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021.) In short, that misconduct has to be specifically described.

"To determine whether the defendant has established good cause for in-chambers review of an officer's personnel records, the trial court looks to whether the defendant has established the materiality of the requested information to the pending litigation. The court does that through the following inquiry: Has the defense shown a logical connection between the charges and the proposed defense? Is the defense request for *Pitchess* discovery factually specific and tailored to support its claim of officer misconduct? Will the requested *Pitchess* discovery support the proposed defense, or is it likely to lead to information that would support the proposed defense? Under what theory would the requested information be admissible at trial? If defense counsel's affidavit in support of the *Pitchess* motion adequately responds to these questions, and states 'upon reasonable belief that the governmental agency identified has the records or information from the records' [citation], then the defendant has shown good cause for discovery and in-chambers review of potentially relevant personnel records of the [peace] officer accused of misconduct against the defendant." (*Warwick, supra*, 35 Cal.4th at pp. 1026-1027.)

First, we must conclude that defendant made a sufficient showing to warrant an in camera review of the personnel files of all three sheriff's deputies who took part in defendant's arrest. Although defendant does not deny fleeing from Deputy Duckett, and is not charged with resisting him, Deputy Duckett did take part in subduing him. Thus, Duckett's history of using excessive force, if any, is arguably relevant to the charges concerning the other sheriff's deputies.

Next, with respect to the issue of fabrication of evidence, defendant does not deny he was not wearing a helmet nor that he possessed cocaine base. He does deny giving consent to search, however. Thus, although he fails to deny certain aspects of Deputy Duckett's report, there is a sufficient basis to conduct an in camera review of Deputy Duckett's personnel file for complaints of dishonesty and fabrication of evidence.

Neither of the other sheriff's deputies involved in this incident wrote a report nor made a statement that defendant asserts is false. Therefore, defendant has not made a showing to justify reviewing their personnel files with respect to claims of dishonesty or fabricating evidence.

Finally, defendant has made no showing that racial bias played any part in this incident with respect to any of the sheriff's deputies. Therefore, he is not entitled to have the court review their personnel files for such complaints.

#### DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to set aside its order denying petitioner's motion for discovery of peace officer personnel records and to issue a new order granting this motion in part. The superior

court shall conduct an in camera review of the personnel files consistent with the views expressed herein.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

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KING  
Acting P. J.

We concur:

HOLLENHORST  
J.

MILLER  
J.